



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 29, 1995

Ms. Cynthia Figueroa Calhoun
Ronquillo & DeWolf, P.C.
750 North St. Paul Street, Suite 900
Dallas, Texas 75201

OR95-1301

Dear Ms. Calhoun:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 36254.

The North Central Texas Regional Certification Agency (the "agency") received a request for all records pertaining to the application for certification and certification of Business Designs & Concepts, Inc. You claim that a portion of the requested information may be excepted under section 552.110 of the Government Code. Pursuant to section 552.305 of the Government Code, this office informed the company, Business Designs & Concepts, Inc., of the request and of its obligation to claim the exceptions to disclosure it believes apply to the requested information, together with its arguments as to why it believes the claimed exceptions apply. Business Designs & Concepts, Inc. did not respond. We will therefore address your claim that section 552.110 may except certain of the requested documents from disclosure.

Section 552.110 excepts from disclosure trade secrets or financial information obtained from a person and confidential by statute or judicial decision. These two parts of section 552.110 must be considered separately. The Texas Supreme Court has adopted the definition of "trade secret" from the Restatement of Torts, section 757, which holds a "trade secret" to be:

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret

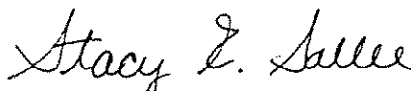
information in a business . . . in that it is not simply information as to a single or ephemeral event in the conduct of the business A trade secret is a process or device for continuous use in the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958). If a governmental body takes no position with regard to the application of the "trade secrets" branch of section 552.110 to requested information, we accept a private person's claim for exception as valid under that branch if that person establishes a prima facie case for exception and no one submits an argument that rebuts the claim as a matter of law. Open Records Decision No. 552 (1990) at 5. Here, Business Designs & Concepts, Inc. has not established a prima facie case that the submitted information is a trade secret. Therefore, the agency may not withhold the requested information under the first part of section 552.110.

To fall within the second part of section 552.110, the information must be made confidential by a statute or judicial decision. Open Records Decision No. 592 (1991) at 6. We find that a portion of the submitted information, Business Designs & Concepts, Inc.'s federal income tax returns and supporting schedules and the individual federal income tax returns, are confidential under federal law. 26 U.S.C. §§ 6103, 7213. Therefore, the agency must withhold this federal income tax information. However, as neither the agency nor Business Designs & Concepts, Inc. has demonstrated that a statute or judicial decision excepts the remainder of the submitted information from disclosure, we conclude that the remainder of the submitted information is not excepted by the second part of section 552.110 of the Government Code.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

Ref.: ID# 36254

Enclosures: Submitted documents

cc: Mr. Donald P. Lan, Jr.
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